

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT  
BETWEEN THE CITY OF SAN ANTONIO AND HVHC, INC.**

This Economic Development Program Grant Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among the City of San Antonio (the "GRANTOR"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee and HVHC, Inc. (hereinafter referred to as "GRANTEE"), acting by and through its President and Chief Executive Officer. Together, the GRANTOR and GRANTEE may be referred to herein as the "Parties."

**WHEREAS**, GRANTEE is a wholly owned subsidiary of Highmark Inc., a private, worldwide provider of healthcare and vision services; and

**WHEREAS**, GRANTEE is engaged in an economic development project consisting of the establishment of a manufacturing/assembly facility that will result in the creation of six hundred (600) full-time jobs and the investment of \$25 million in personal property improvements (the "Project"); and

**WHEREAS**, GRANTEE has identified a location within the city limits of the City of San Antonio to establish the manufacturing facility, specifically at 655 Richland Hills Dr., San Antonio, TX 78245 (the "Project Site"); and

**WHEREAS**, GRANTEE has requested economic development incentive funds to assist GRANTEE to defer costs associated with undertaking and completing the Project at the Project Site; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and pursuant to City Ordinance No. 100684 GRANTOR adopted an Economic Development Program which meets the requirements of Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, GRANTOR has identified funds to be made available to incentivize GRANTEE to undertake and complete the Project at the Project Site; and

**WHEREAS**, the City Council of GRANTOR has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No. 20134-11-DS7, passed and approved on April 11, 2013 to grant said funds;

**NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

**SECTION 1. AGREEMENT PURPOSE**

The purpose of this Agreement is to provide certain Economic Development Grants to GRANTEE as an incentive for GRANTEE to undertake the Project at the Project Site. The GRANTOR anticipates that if the Project is undertaken at the Project Site, the Project will promote local economic development and stimulate business and commercial activity in the City of San Antonio. As such, GRANTOR is willing to support the Project, if undertaken at the Project Site, through the Economic Development Grants provided in this Agreement to provide funds to be used to defer costs associated with undertaking and completing the Project at the Project Site.

## SECTION 2. PROJECT REQUIREMENTS

In consideration of GRANTOR providing the economic development grants provided in Section 3 of this Agreement, GRANTEE will comply with the following obligations:

A. Lease Agreement. GRANTEE shall cause Visionary Properties, Inc. ("VPI") to enter into a Lease Agreement (the "Lease") prior to June 1, 2013 with the owner of the Project Site to locate on the Project Site. The Lease must have a term of not less than ten (10) years, and GRANTEE shall provide an Acknowledgement of Lease (Exhibit "A"), indicating the term, and square footage, executed by GRANTEE and the lessor of the Project Site. Notwithstanding the foregoing, should GRANTEE fail to execute the Lease prior to June 1, 2013, this Agreement shall be terminated and neither Party shall be held to any of the terms or conditions herein.

B. Investment. Between the date of the Lease and December 31, 2016, GRANTEE shall invest approximately TWENTY-FIVE MILLION AND NO/100 DOLLARS (\$25,000,000.00) in personal property at the Project Site. GRANTEE shall retain all pertinent records evidencing GRANTEE's personal property expenditures until December 31, 2017.

C. Business Activities. GRANTEE shall cause its subsidiary to establish an eye wear assembly and lens processing and distribution facility at the Project Site prior to December 31, 2013, and thereafter operate same and/or such other optical product related business as, GRANTEE's subsidiaries may engage in from time to time (the "Business Activities") at the Project Site for the Term of this Agreement (as defined in Section 4), except to the extent said Project Site may be rendered unsuitable for such use due to a Force Majeure Event (as defined in Section 16 of this Agreement). Except as provided herein, GRANTEE covenants and agrees that the Business Activities will not be changed without the written consent of GRANTOR, such consent not to be unreasonably withheld, conditioned or delayed. However, such consent shall not be necessary if a Related Organization (being defined as a parent, subsidiary, direct or indirect at any level, or affiliate organization of GRANTEE or any entity which succeeds to or receives an assignment of GRANTEE's interest under this Agreement as a result of a merger, acquisition, or other corporate restructure or reorganization of GRANTEE, or any parent, subsidiary or affiliate of such entity) occupies the Project Site and continues to use the premises demised under the Lease for the Business Activities consistent with the terms and conditions of this Agreement. To be eligible for the benefits of this Agreement, the Related Organization must agree in writing, to comply with all applicable terms herein from and after the date it succeeds to GRANTEE's interest in this Agreement, and if requested by GRANTOR the Related Organization must enter into an amendment to this Agreement evidencing such agreement. In the event of any such transfer to a Related Organization, GRANTEE must notify CITY in writing of same no later than the 30<sup>th</sup> day following the effective date of such transfer. GRANTEE acknowledges that any change in the principal use of the Project Site from that contemplated herein without prior written approval of GRANTOR, to the extent same is required under this Agreement, may result in a loss of the economic development grants to be provided to GRANTEE under this Agreement and the recapture of grant funds disbursed under this Agreement in accordance with Section 15.

D. Full-Time Jobs. Once established, evidenced by the issuance of a Certificate of Occupancy for the Project Site, GRANTEE shall cause its subsidiaries to create and/or relocate a minimum of six hundred (600) Full-time jobs, as defined below, at the Project Site over a six (6) year period commencing upon the issuance of the Certificate of Occupancy for the Project Site. The Full Time Jobs will be added in accordance with the following schedule:

At least one hundred fifty (150) Full-Time Jobs will be created at or relocated to the Project Site prior to the first anniversary of the Effective Date of this Agreement and at least ninety (90) Full-Time Jobs will be created at or relocated to in each of the second through sixth years of the term of this Agreement so that at the end of the sixth year of the term of this Agreement the six hundred (600) jobs will be located at the Project Site as required above.

1. For the purposes of this Agreement, a Full-Time Job shall be equivalent to two thousand fifteen (2,015) straight-time paid hours in a fiscal year. It is agreed by the Parties that for purposes of meeting the required job numbers for all purposes under this Agreement, "Full-Time Jobs" shall be calculated using both filled and open positions, so long as GRANTEE is actively recruiting to fill such open positions.

2. GRANTEE agrees that in addition to the requirements of Section 2(C)(1) above, to qualify as a Full Time Job under this Agreement, the minimum wage for the employee must be ELEVEN DOLLARS AND EIGHT CENTS (\$11.08) per hour exclusive of the value of all benefits provided to such employees. GRANTEE shall submit Annual Wage Compliance Reports certifying their compliance with these wage requirements, in accordance with the terms of Section 2.E. below. For purposes of calculating the "hourly wage" of any salaried employee the employee's annual salary will be divided by 2015 to calculate the hourly wage equivalent.

3. Additionally, to qualify as a "Full-Time Job employee" for purposes of this Agreement, each such employee will be offered an opportunity to participate in the employee benefits program of its respective employer which shall be substantially similar to employee benefits offered to similarly situated employees of such employer in other locations. In addition, in order to qualify as a "Full-Time Job employee", said employee shall be offered a health plan which provides coverage for their eligible dependents on terms substantially similar to the coverage provided to the eligible dependents generally of its respective employer's non-temporary full-time employees at other locations.

4. At least fifty (50) of the six hundred Full-time Jobs must be "high-wage" jobs. The average annual salary, excluding the value of all benefits, provided to all "high-wage" job employees at the Project Site shall be no less than FORTY-THREE THOUSAND ONE HUNDRED EIGHTY-SIX NO/100 DOLLARS (\$43,186.00). TWENTY-FIVE (25) of the "high wage" jobs must be created prior to the end of Year 3 of this Agreement and an additional TWENTY-FIVE "high-wage" jobs must be created prior to the end of Year 6 of this Agreement.

E. Certification. Within thirty (30) days of the end of each calendar year during the term of this Agreement, GRANTEE will provide GRANTOR's Director of Economic Development Department with an annual certification from an officer of GRANTEE attesting to the number of Full-Time Jobs and "high wage" jobs created and maintained at the Project Site during the preceding year, as well as wages paid, the annual average salary for all such employees and GRANTEE's investment in personal property at the Project Site as of such date.

### **SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT**

In exchange for GRANTEE pursuing and completing the Project at the Property, GRANTOR will provide the following economic incentive grants (the "Grants") to the GRANTEE:

A. Economic Development Program Grant. GRANTOR will provide GRANTEE with an Economic Development Program Grant in a maximum grant amount not to exceed ONE MILLION ONE HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$1,140,000.00) to be paid out in

an amount equal to ONE THOUSAND NINE HUNDRED AND NO/100 DOLLARS (\$1,900.00) per Full-Time Job created at the Project Site. The maximum grant amount shall be paid-out in not less than three (3) years and not more than six (6) years according to the creation of SIX HUNDRED (600) Full-time Jobs prior to year six (6) of this Agreement.

- B. Grant Disbursement. Following the execution of this Agreement by the Parties, GRANTEE providing the Acknowledgement of Lease to GRANTOR, and the Business Activities commencing on the Property, the grant funds will be disbursed over the Term of this Agreement, subject to the terms and conditions herein, as follows:

1. Initial Grant Disbursement. An Initial Grant Disbursement not to exceed THREE HUNDRED AND EIGHTY THOUSAND AND NO/100 DOLLARS (\$380,000.00) shall be disbursed to GRANTEE within forty-five (45) days of GRANTOR having received certification from an officer of GRANTEE confirming that GRANTEE and/or its subsidiaries, any Related Organization, or other permitted assignee of this Agreement has commenced Business Activities at the Project Site and certifying to the number of Full-Time Jobs then created at or relocated to the Project Site, which certification must be accompanied by a copy of the certificate of occupancy issued for the Project Site, with the grant amount to be then funded being equal to the number of Full-Time Jobs verified through the certification multiplied by ONE THOUSAND NINE HUNDRED AND NO/100 DOLLARS (\$1,900.00), up to a maximum disbursement of \$380,000.00. GRANTEE may submit such certificate at any time following the commencement of Business Activities at the Project Site.

2. Additional Grant Disbursements. No sooner than twelve (12) months nor later than eighteen (18) months following the date of the Initial Grant Disbursement, and, thereafter, no sooner than twelve months following the previous years disbursement, for a period of up to six (6) years after the Initial Grant Disbursement, GRANTEE may request additional grant funds to be disbursed in amounts equal to the number of Full-Time jobs then created at the Project Site that were not previously submitted for payment under Section 3(B)(1) above, or this Section, in amounts equal to ONE THOUSAND NINE HUNDRED AND NO/100 DOLLARS (\$1,900.00) per Full-Time Job created provided that the cumulative total of the Job Creation Grant funds disbursed by GRANTOR does not exceed ONE MILLION ONE HUNDRED AND FORTY THOUSAND AND NO/100 DOLLARS (\$1,140,000.00) in the aggregate and the total grants paid in any one disbursement do not exceed \$380,000.00. GRANTEE's Request for Disbursement must be accompanied by a written certification from an officer of GRANTEE confirming that GRANTEE and/or its subsidiaries or any Related Organization or other permitted assignee of this Agreement have relocated to, or created at, the Project Site, the number of Full-Time Jobs for which a grant disbursement is then sought. GRANTOR must disburse the requested grants to GRANTEE within forty-five (45) days of the date GRANTOR receives the request and supporting certification.

5. GRANTEE's requests for disbursement must be accompanied by the written certification of an officer of GRANTEE confirming that GRANTEE have created the number of Full-Time Jobs for which the disbursement is sought.

- C. The Parties agree that if, on the sixth (6<sup>th</sup>) anniversary of the initial draw request, GRANTEE has not submitted a request to provide Grant disbursements for SIX HUNDRED (600) Full-Time Jobs, then GRANTEE shall forfeit its right to thereafter submit for payment of any then unrequested Job Grants and GRANTOR shall have no obligation to make advances in the future for any then unrequested Job Grants.

#### **SECTION 4. ADDITIONAL INCENTIVES**

In addition to the Economic Development Program Grant set forth in Section 3, GRANTOR will provide the following incentives to GRANTEE:

- A. GRANTOR will nominate the Project, including GRANTEE, its subsidiary Visionworks of America, Inc., any other subsidiaries of Visionworks of America, Inc. actually conducting operations at the Project, or any combination of them, as GRANTEE may elect, to the State of Texas for designation as an enterprise project pursuant to Chapter 2303 of the Texas Government Code entitling the company, if approved, to the benefits resulting from such designation and the GRANTOR will use all reasonable and good faith efforts to assist GRANTEE, its subsidiaries, all of them or any of them, as GRANTEE may elect in obtaining such designation,
- B. GRANTOR, working through its Economic Development Department, will work with GRANTEE to pursue the activation of a Foreign Trade Zone site at the Project Site and at the facility currently located at 6601 Guada Coma Drive in Schertz, Texas and will assist GRANTEE in obtaining such activation and designation and take such actions as may be reasonably requested by GRANTEE in connection with such effort to assist GRANTEE and its subsidiaries operating in such facilities in obtaining the benefits to accrue to a designated site within a Foreign Trade Zone.
- C. GRANTOR must designate a Project Coordinator within its Economic Development Department to assist GRANTEE in securing the necessary permits, inspections and approvals to meet its development timelines for the Project.

#### **SECTION 5 AGREEMENT PERIOD**

This Agreement shall commence upon the Effective Date listed on the signature page of this Agreement and terminate upon the earlier of: (A) the expiration of ten (10) years following the Effective Date (the "Term"); or (B) termination of this Agreement as otherwise provided herein.

#### **SECTION 6. GRANTOR'S OBLIGATIONS**

- A. Payment. GRANTEE acknowledges that the payments of the Grants shall be subject to, and made solely from, annual appropriations of the GRANTOR in the budget year in which they are to be paid as may be legally set aside for the implementation of ARTICLE III, Section 52A of the Texas Constitution, Chapter 380 of the Texas Local Government Code, or any other economic development or financing program authorized by statute or home-rule powers of the GRANTOR under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that GRANTOR does not appropriate funds necessary to pay the Grants in any budget year (as reflected in the GRANTOR's adopted budget for such year), GRANTOR shall not be liable to GRANTEE for such payments or expenditures unless and until such appropriation of funds is made provided, however, that, in such event, GRANTEE may, in its sole discretion, either then (i) terminate this Agreement, in which event GRANTEE and GRANTOR shall have no further obligations under this Agreement including, but not limited to any obligations for the year in respect to which said unappropriated funds relate or (ii) elect to continue this Agreement, in which event, GRANTEE shall be entitled to recoup the unappropriated amounts of the Parking Reimbursement Grants by crediting same against any and all sums thereafter become due and owing by GRANTEE, or any of its subsidiaries (direct or indirect) or affiliates to GRANTOR, including, without limitation, any amounts owed by Visionary Properties, Inc. under that

certain Parking Agreement (so called herein) entered into by and between GRANTOR and Visionary Properties, Inc. dated September 6, 2011.

B. No Liability for Costs. Except as set forth in this Agreement, GRANTOR will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE in connection with this Agreement.

#### **SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS**

A. Retention. GRANTEE and/or its subsidiaries shall maintain the records and supporting documentation (the "Records") relating to the relocation and maintaining of Full-Time Jobs at the Project Site. GRANTEE shall retain such records and any supporting documentation through the end of the term of this Agreement.

B. Access. GRANTEE shall, following at least fourteen (14) days advance, written notice from GRANTOR, give GRANTOR, its designee, or any of their duly authorized representatives, access to the Records at the Project Site during normal business hours. GRANTOR's access to the Records will be limited to reviewing information needed to verify that GRANTEE is and has been complying with the terms of this Agreement. GRANTOR may not copy or otherwise take control of such Records. Any information that is not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to GRANTOR any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue through the term of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default.

#### **SECTION 8. MONITORING**

GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. GRANTOR will provide GRANTEE with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the monitoring report within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

#### **SECTION 9. CONFLICT OF INTEREST**

If applicable, GRANTEE shall ensure that no employee, officer, or individual agent of GRANTOR shall participate on behalf of GRANTEE in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. To the extent GRANTEE hires any former or current employee or official of GRANTOR who would be subject to the GRANTOR's ethics policy, as same exists from time to time, GRANTEE shall take

reasonable efforts to ensure that such person complies with all applicable requirements of the GRANTOR's ethics ordinance in dealings between GRANTOR and GRANTEE.

#### **SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

A. Nondiscrimination. GRANTEE shall use reasonable efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity of, GRANTEE funded in whole or in part with funds made available under this Agreement.

B. Sectarian Activity. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

#### **SECTION 11. LEGAL AUTHORITY**

A. Legal Authority. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. Signatories. Each party represents and warrants to the other that the person or persons signing and executing this Agreement on behalf of such party has been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

#### **SECTION 12. GOVERNING LAW AND VENUE**

A. Notice to City. GRANTEE shall give GRANTOR immediate notice in writing of any (i) OSHA complaint filed by an employee of GRANTEE or any of its subsidiaries concerning the Project Site of (ii) notice of any bankruptcy of GRANTEE, or (iii) any notice given by GRANTEE or any of its subsidiaries or affiliates to its employees at the Project Site required under any applicable laws pertaining to contemplated job reductions at such premises. GRANTEE shall submit a copy of each such notice required hereunder to GRANTOR within 30 calendar days after receipt or issuance, as applicable.

B. Texas Torts Claims Act. GRANTEE acknowledges that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. Venue. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

#### **SECTION 13. ATTORNEY'S FEES**

In the event GRANTEE or GRANTOR should default under any of the provisions of this Agreement and the other should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation

or agreement on the part of the defaulting party herein contained, the defaulting party agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

#### **SECTION 14. CHANGES AND AMENDMENTS**

A. Amendments in Writing. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties to this Agreement.

B. 380 Program. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

#### **SECTION 15. SUSPENSION**

A. Notice and Cure Period. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, if applicable, or anything else in this Agreement to the contrary, in the event GRANTEE fails to comply with the terms of this Agreement, GRANTOR shall provide GRANTEE with written notification as to the nature of the non-compliance and grant GRANTEE a sixty (60) day period following the date of the GRANTEE's receipt of GRANTOR's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, or such longer period of time as may be reasonably necessary for GRANTEE to cure the default in question if same cannot reasonably be cured within such sixty (60) day period, the GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE Agreement until the default is cured. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. Lifting of Suspension. A suspension under this Section shall be lifted by GRANTOR upon a showing by GRANTEE that the event of default has been cured or by a written waiver of GRANTOR of the term(s) in question.

D. No Liability. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

#### **SECTION 16. DEFAULT, TERMINATION AND RECAPTURE, AND OTHER REMEDIES**

A. Relocation Defined. For purposes of this section, "Relocation" "Relocated" or "Relocate" shall mean GRANTEE or a Related Organization, or any other permitted transferee of GRANTEE's rights under this Agreement, which has taken the place of GRANTEE, transferring the Business Activities from the Project Site to a location not on the Property for reasons other than the inability to conduct the Business Activities at the Project Site due to casualty, condemnation, the Landlord under the Lease failing to perform its obligations thereunder, or other reasons beyond the reasonable control of GRANTEE or its subsidiaries or any such Related Organization or other permitted transferee of GRANTEE's rights under this Agreement (any of the foregoing being a "Force Majeure Event").

B. Default of GRANTEE. GRANTEE shall be in default under this Agreement:



1. Relocation. If during the Term of this Agreement, GRANTEE occupies and uses the Property for its Business Activities and subsequently Relocates (as defined in this Section 16, Paragraph A) during the Term, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation occurred. Unless GRANTEE presents credible evidence to clearly indicate a date of Relocation, GRANTOR's determination shall be final and conclusive. Upon termination, GRANTOR shall have the right to recapture from GRANTEE a percentage of the Grants previously disbursed to the GRANTEE, and/or for the benefit of the GRANTEE, under this Agreement and not previously recaptured by GRANTOR in accordance with the recapture schedule set forth below and GRANTOR shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination and its election to recapture such amounts.
2. Ceasing. If, after the conditions set forth in Section 2(A) of this Agreement are met, GRANTEE occupies and uses the Property for its Business Activities and subsequently ceases conducting Business Activities at the Project Site for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure Event; then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Property was no longer used for the required purposes stated herein. Unless GRANTEE presents credible evidence to clearly indicate a date of cessation, GRANTOR's determination of a date of cessation shall be final and conclusive. Upon termination, GRANTOR shall have the right to recapture from GRANTEE a percentage of the Grants previously disbursed to the GRANTEE, and/or for the benefit of the GRANTEE, under this Agreement and not previously recaptured by GRANTOR in accordance with the recapture schedule set forth below and GRANTOR shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination and its election to recapture such amounts.
3. Number of Jobs. If GRANTEE, its affiliates and/or subsidiaries, any Related Organization, and/or other City-approved assignee permitted under this Agreement fails to, for any reason other than a Force Majeure Event, :
  - a. create at the Project Site at least SIX HUNDRED (600) Full-Time Jobs on or before the sixth (6<sup>th</sup>) anniversary of the Effective Date of this Agreement, or having done so thereafter fails to maintain at the Project Site at least FOUR HUNDRED AND FIFTY (450) Full-Time Jobs during the Term of this Agreement, GRANTOR may terminate this Agreement. Upon such termination, a percentage of the grant funds previously disbursed to the GRANTEE, and/or for the benefit of the GRANTEE, under this Agreement which have not been previously recaptured by GRANTOR may be recaptured by GRANTOR according to the schedule below.
  - b. following the creation of SIX HUNDRED Full-Time Jobs, maintain at the Project Site an average of SIX HUNDRED (600) full-time jobs for a period of two consecutive annual reporting periods, but maintains at least FOUR HUNDRED AND FIFTY (450) full-time jobs to include the fifty (50) full-time jobs designated as "high-wage" during such periods, then a percentage of the grant funds previously disbursed to the GRANTEE under this Agreement which are attributable to jobs created above and not subsequently maintained may be recaptured by the GRANTOR, to the extent same have not been previously recaptured by GRANTOR, according to the schedule below.

E. In any circumstance where GRANTOR is entitled and elects, to recapture a portion of the Grants disbursed hereunder, the portion subject to recapture shall be as follows:

<u>TERM YEAR IN WHICH RECAPTURE OCCURS</u>	<u>TOTAL PERCENTAGE OF UNRECAPTURED FUNDS TO BE RECAPTURED:</u>
1-6	100%
7	80%
8	60%
9	40%
10	20%

GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing.

F. Limitation on Recapture. Notwithstanding the foregoing, any such recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled at law or under this Agreement. The termination and/or recapture of grant funds provided in this Section 16 are not applicable to situations involving minor changes to the description of the Property, or changes in ownership or in management thereof, so long as GRANTEE, its parent, subsidiary, affiliate or any successor or assignee allowed under the terms of this Agreement, continues conducting Business Activities or other authorized activities thereon as provided hereinabove.

G. Limitation on Remedies. The foregoing termination and recapture rights shall be GRANTOR's sole and exclusive remedies in the event GRANTEE shall default under this Agreement.

H. GRANTOR Default. GRANTOR shall be in default under this Agreement if it defaults in the performance of any of its obligations under this Agreement and such failure continues uncured for a period of thirty (30) days from and after the date GRANTEE notifies GRANTOR of such failure. Upon a default by GRANTOR, GRANTEE shall be entitled to seek any right or remedies available to it at law or in equity, including, without limitation, bringing an action to require GRANTOR to specifically perform its obligations hereunder including, without limitation, a mandamus action to compel such performance and shall expressly be allowed to recoup any and all amounts which it is owed by GRANTOR by crediting same against any and all amounts that may thereafter be owed by GRANTEE or any of its subsidiaries (direct or indirect) or affiliates to GRANTOR, including, without limitation, any amounts owed by Visionary Properties, Inc. under the Parking Agreement. GRANTOR acknowledges that GRANTEE's remedies shall be cumulative of each other.

For purposes of enforcement of this Agreement by GRANTEE, GRANTOR, to the fullest extent allowed by law, hereby waives any and all defenses, or other rights to assert claims, of sovereign immunity, including, without limitation, immunity from liability and immunity from suit by Grantee for all purposes in any such enforcement action by GRANTEE.

#### **SECTION 17. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)**

In addition to relief expressly granted in this Agreement, GRANTEE shall be granted relief from performance of this Agreement to the extent GRANTEE is prevented and/or impaired from compliance and performance by any Force Majeure Event. The burden of proof for the need for such relief shall rest upon GRANTEE. To obtain relief based upon this Section 17, GRANTEE must file a written notice with

the GRANTOR's International and Economic Development Department specifying the Force Majeure Event and the performance under this Agreement that such event is impairing.

#### **SECTION 18. SPECIAL CONDITIONS AND TERMS**

GRANTEE, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any worker during the Term of this Agreement who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Workers"). If GRANTEE is convicted of a violation under 8 U.S.C. Section 1324a (f), then GRANTEE shall repay GRANTOR the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within 120 business days after the date GRANTEE is notified by GRANTOR of such violation. GRANTOR, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to GRANTOR under this Section 18 at the rate of five percent (5%) per annum from the date of such violation notice until paid. GRANTEE shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate or franchisee or by a person with whom GRANTEE contracts.

#### **SECTION 19. TIME IS OF THE ESSENCE**

The parties acknowledge that time is of the essence with respect to their obligations under this Agreement.

#### **SECTION 20. NO WAIVER**

Failure by either party to exercise any right or remedy hereunder available to it shall not constitute a waiver of the right to exercise that or any other right or remedy at any time in the future, absent a written agreement to the contrary.

#### **SECTION 21. NON-ASSIGNMENT**

This Agreement is not assignable by any Party without the written consent of the non-assigning Parties. GRANTOR shall not unreasonably withhold, condition, or delay its consent to any such assignment by GRANTEE. Notwithstanding the foregoing, GRANTEE may assign this Agreement to a Related Organization, without the written consent of the GRANTOR. If GRANTEE so assigns this Agreement it will provide notice of such assignment to GRANTOR on or before the thirtieth (30<sup>th</sup>) day following the date of assignment. Any assignment of this Agreement in violation of this Section shall enable GRANTOR to terminate this Agreement and exercise its rights under this Agreement. Any assignment of this Agreement by GRANTEE shall relieve GRANTEE of all obligations and liabilities under this Agreement. Notwithstanding the foregoing, GRANTEE and/or any successor to GRANTEE's interest in the this Agreement may collaterally assign and/or grant a security interest in the payments to be received by GRANTEE hereunder without GRANTOR's consent if required by any lender providing financing to any such entity or any parent, subsidiary, or affiliated company of such entity.

#### **SECTION 22. ORAL AND WRITTEN AGREEMENTS**

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

### SECTION 23. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

#### TO GRANTOR:

#### TO GRANTEE:

(Whether personally delivered or mailed):

City of San Antonio  
Attn: Economic Development  
P.O. Box 839966  
San Antonio, Texas 78283-3966

HVHC, Inc.  
175 E. Houston St., 8<sup>th</sup> Floor  
San Antonio, TX 78205  
Attn: Vice President – Real Estate

- If by personal or overnight delivery:

Economic Development  
Attn: Director  
19th Floor  
100 Houston St.  
San Antonio, Texas 78205

### SECTION 24. INCORPORATION OF EXHIBITS

Each of the Exhibits and Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Exhibit A – Acknowledgement of Lease

### SECTION 25. TERMINATION

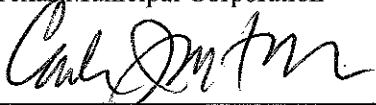
GRANTEE may terminate this Agreement at any time prior to July 1, 2013 if grantee elects not to enter into the Lease for any reason.

*Signatures appear on next page.*

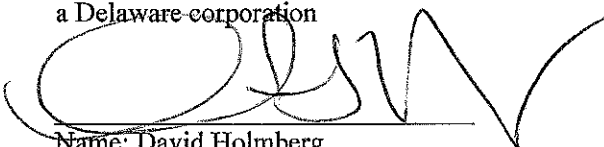
WITNESS OUR HANDS, EFFECTIVE as of April 11, 2013 (the "EFFECTIVE DATE"):

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to the attached Ordinance Number 2013-4-11-0287 and GRANTEE pursuant to its authority.

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

  
Sheryl L. Sculley  
CITY MANAGER

**HVHC, Inc. (GRANTEE)**  
a Delaware corporation

  
Name: David Holmberg  
Title: President and Chief Executive Officer

ATTEST:

  
Leticia Vacek  
CITY CLERK

APPROVED AS TO FORM:

  
Michael D. Bernard  
CITY ATTORNEY



# EXHIBIT "A"

## CERTIFICATE OF LEASE

April 5, 2013

This Certificate of Lease is executed by Visionary Properties, Inc. ("Tenant") and Concordia TW, Ltd. ("Landlord") in favor of the City of San Antonio (the "City"), pursuant to the terms of that certain Economic Development Program Grant Agreement (the "Agreement") dated April, 2013 by and between the City of San Antonio and HVHC, Inc.

In furtherance of the requirements of the Agreement, the Landlord and Tenant do hereby certify to City as follows:


1. Landlord and Tenant have entered into that certain Lease dated April 5, 2013, (the "Lease") pertaining to certain premises constituting Landlord's building commonly known as 655 Richland Hills Drive, San Antonio, Texas.
2. The Lease has an expected term of at least ten (10) years, exclusive of renewal options.
3. The Lease is for Landlord's building containing approximately 120,760 square feet of space, and contains certain rights of Tenant to further expand the premises demised thereunder.

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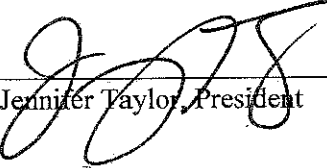
IN WITNESS WHEREOF, this Certificate is executed as of the date first set forth above.

**Concordia TW, Ltd.**

By: M. Dolan Corporation, its general partner

By:   
Michael J. Dolan, President

**Visionary Properties, Inc.**

By:   
Jennifer Taylor, President

**FIRST AMENDMENT TO THE ECONOMIC DEVELOPMENT  
PROGRAM GRANT AGREEMENT**

**BETWEEN THE CITY OF SAN ANTONIO AND HVHC, INC.**

This First Amendment to the Economic Development Program Grant Agreement (hereinafter referred to as "First Amendment") is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "GRANTOR") a Texas Municipal Corporation acting by and through its City Manager pursuant to Ordinance No. 2013-~~04-11~~ 0256, dated April 11, 2013 and HVHC, Inc. (hereinafter referred to as "GRANTEE") acting by and through its President and Chief Executive Officer. Together, the GRANTOR and GRANTEE may be referred to herein as the "Parties."

**RECITALS**

- A. GRANTOR and GRANTEE are parties to that certain Economic Development Program Grant Agreement entered into pursuant to Ordinance No. 2011-09-01-0721 passed and approved on September 1, 2011 (the "Agreement").
- B. Prior to the effectiveness of this First Amendment, the Agreement contained certain terms that the Parties now seek to clarify, change, or amend.
- C. GRANTOR and GRANTEE desire to amend the Agreement as stated in this First Amendment to provide additional economic incentive grant to GRANTEE in connection with an expansion of the workforce of GRANTEE and its subsidiaries at the Property.
- D. All other provisions of the Agreement remain in force.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in the Agreement, the receipt and adequacy of which are hereby acknowledged, GRANTOR and GRANTEE hereby agree as follows:

- 1. **Definitions.** All capitalized terms used in this First Amendment without definition herein shall have the meanings assigned to such terms in the Agreement.
- 2. **Amendments.**
  - (A) Section 2(C)(2) of the Agreement is hereby amended to provide that one-hundred percent (100%) of Full-Time Jobs created by GRANTEE after the Effective Date of this First Amendment, as evidenced on the signature page, shall pay a minimum of ELEVEN DOLLARS AND 0/8 CENTS (\$11.08) per hour.



- (B) Section 3 of the Agreement is hereby amended by adding the following provision:

E. Expansion Grant. In the event the workforce of GRANTEE and its subsidiaries operating at the Property is expanded from the three hundred fifty (350) Full-Time Jobs set forth above in accordance with the terms and provisions of this Section 3(E), GRANTOR shall provide GRANTEE with an additional THREE HUNDRED AND SIXTY THOUSAND AND NO/100 DOLLARS (\$360,000.00) (the "Expansion Grant Funds") to assist in expanding GRANTEE's headquarters located at the Property and to provide parking assistance for the Additional Full-Time Jobs (as defined herein) GRANTEE or its subsidiaries will create at, or relocate to, the Property. The Expansion Grant Funds shall be provided in five (5) annual distributions of SEVENTY-TWO THOUSAND AND NO/100 DOLLARS (\$72,000.00) each.

The first disbursement of Expansion Grant Funds shall be made within forty-five (45) days following submission by GRANTEE to GRANTOR of a certificate of GRANTEE certifying that (i) Visionary Properties, Inc. has entered into the Lease Amendment (as defined herein) and (ii) at least 30 Additional Full-Time Jobs of the required 50 Additional Full-Time Jobs to be created at, or relocated to, the Property prior to December 31, 2013 have been created at, or relocated to, the Property.

Subsequent annual disbursements of Expansion Grant Funds shall be made within forty-five (45) days after the date GRANTEE provides its request for same, which request must be accompanied by GRANTEE'S certificate to GRANTOR that the requisite number of Additional Full-Time Jobs required to have been created at, or relocated to, the Property by the date of such request as set forth in Table 1 below have in fact been created at, or relocated to, the Property by GRANTEE and its subsidiaries by such date; provided no request may be made sooner than twelve (12) months from the date of the GRANTEE's last disbursement request..

The disbursement of the Expansion Grant Funds are subject to the following terms and conditions:

1. The initial Expansion Grant Fund disbursement shall be conditioned upon Visionary Properties, Inc. ("VPI") having entered into an amendment of its Lease for the Property (herein the "Lease Amendment") pursuant to which VPI leases an additional two (2) floors in the building known as 175 E. Houston Street, San Antonio, Texas.
2. GRANTEE, its subsidiaries, Visionworks of America, Inc., Davis Vision, or any other of its wholly owned subsidiaries, relocating and/or creating one hundred fifty (150) additional Full-Time Jobs at the Property over and above the three hundred fifty (350) Full-Time Jobs contemplated by Section 2C of this Agreement (said 150 additional Full-Time Jobs being herein called the "Additional Full-Time

Jobs"). If not sooner created, such Additional Full-Time Jobs must be created and relocated in accordance with the following schedule:

**TABLE 1**

BY DECEMBER 31, 2013	50 Additional Full-Time Jobs for a cumulative total of 400 Full-Time Jobs at the Property;
BY DECEMBER 31, 2014	50 more Additional Full-Time Jobs, for a cumulative total of 450 Full-Time Jobs at the Property;
BY DECEMBER 31, 2015	50 more Additional Full-Time Jobs, for a cumulative total of 500 Full-Time Jobs at the Property.

As to any disbursement of the Expansion Grant Funds, it shall be a condition of such disbursement that the minimum number of Additional Full-Time Jobs required to have been created and/or relocated to the Property as of the date of GRANTEE's request for the disbursement pursuant to the above Table have been created at, or relocated to, the Property. GRANTEE agrees that in order for any Full-Time Job to qualify as an "Additional Full-Time Job", same must pay a minimum wage of \$11.08 per hour, exclusive of the value of all benefits provided to the employee.

If, GRANTEE and its subsidiaries fail to create or relocate One Hundred Fifty (150) Additional Full-Time Jobs on or before December 31, 2015, or having done so thereafter fail to maintain at the premises demised under the Lease at least one hundred twelve (112) of the Additional Full-Time Jobs during the term of this Agreement, GRANTOR may recover from GRANTEE one hundred percent (100%) of the Expansion Grant Funds paid to GRANTEE.

If, after December 31, 2015, GRANTEE has created or relocated the required one hundred fifty (150) Additional Full-Time Jobs but thereafter fails to maintain same for a period of two (2) consecutive annual reporting periods but maintains at least one hundred twelve (112) Additional Full-Time Jobs during such periods, the Expansion Grants disbursed to the GRANTEE which are attributable to the "lost" jobs may be recaptured by the GRANTOR to the extent same have not been previously recaptured by GRANTOR, the recapture to be in an amount of TWO THOUSAND FOUR HUNDRED NO/100 DOLLARS (\$2,400.00) per Additional Full-Time Job less than 150 but in excess of 112.

3. **Effective Date.** This First Amendment shall be effective April 11, 2013 (the "Effective Date").
4. **No Other Changes.** Except as specifically set forth in Section 2 of this First Amendment, all of the terms and conditions of the Agreement shall remain the same and are hereby ratified and confirmed. The Agreement, as amended by this First Amendment, shall continue in full force and effect, and the Agreement, as amended by this First Amendment, shall be read and construed as one instrument.
5. **Choice of Law.** This First Amendment shall be construed in accordance with and governed by the laws of the State of Texas.
6. **Counterparts.** This First Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this First Amendment it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

IN WITNESS HEREOF, the parties hereto have executed in triplicate originals this 11 day of April, 2013.


**CITY OF SAN ANTONIO**  
Texas Municipal Corporation

**HVHC, INC.**

  
for: Sheryl Sculley  
City Manager

  
David Holmberg  
President & Chief Executive Officer

Attest:

  
Leticia Vacek  
City Clerk



**APPROVED AS TO FORM:**

  
Michael Bernard  
City Attorney